

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

RSA.No. 855 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 128/2013 of ADDL.DISTRICT COURT - V,
THIRUVANANTHAPURAM DATED 24-01-2015.**

**AGAINST THE JUDGMENT AND DECREE IN OS 1513/2012 of I ADDL.MUNSIFF COURT,
TRIVANDRUM DATED 16-07-2013.**

APPELLANT/APPELLANT/PLAINTIFF :

**P.M.JACOB, AGED 69 YEARS,
S/O MARKOS, PERUMCHERIL HOUSE,
CHINGAVANAM P.O., KOTTAYAM.**

**BY ADVS.SRI.GEORGE SEBASTIAN.
SRI.R.SYLESHWAREN NAIR.**

RESPONDENTS/RESPONDENTS/DEFENDANTS :

- 1. CAPTAIN J.G. JOSEPH, T.C NO.25/807,
RAMAKRISHNA REDDIAR ROAD,
NEAR NEW THEATRE, THAMPANOOR,
THIRUVANANTHAPURAM - 695 001.**
- 2. R.SUBIN, AVANI, T.C 26/1376, R.R.A.B 74,
VANCHIYOOR, THIRUVANANTHAPURAM - 695 004**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.855 of 2015

Dated this the 5th day of August, 2015.

J U D G M E N T

Plaintiff in a suit for mandatory injunction, who was defeated in two courts, is the appellant.

2. Heard the learned counsel for the appellant.

3. Short point arising for consideration is whether a suit for mandatory injunction against the land lord/first respondent is maintainable? The lower court found that the suit is not maintainable for the reason that there was a first round of litigation between the parties initiated at the instance of the first respondent as RCP No.4/1991 under the provisions of the Kerala Building (Lease and Rent Control) Act. Learned counsel for the appellant submitted that the first respondent/land lord filed a writ petition against the appellant and the Corporation of Thiruvananthapuram seeking a direction to the Corporation to close down the premises. That writ petition was allowed by this Court. The matter was taken up in SLP before the Hon'ble

Supreme Court. In that matter, there was a direction to the appellant to surrender vacant possession within a stipulated time. The reasoning adopted by the courts below is that the appellant was evicted pursuant to that direction. The court below rightly took the view that the order passed by the Supreme Court is a law declared under Article 141 of the Constitution of India binds all the courts. Therefore, the courts below found that a suit for mandatory injunction is not maintainable. Learned Additional District Judge before whom the appeal was preferred also concurred with the trial court. Having heard the learned counsel for the appellant and perused the judgment, I am of the view that the appeal is bereft of any substantial question of law. Hence, the regular second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

Sd/-

**A.HARIPRASAD,
JUDGE.**